

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:11-CR-352-BR  
No. 5:14-CV-359-BR

ARTHUR TRACY VICK,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

ORDER

This matter is before the court on remand from the Fourth Circuit Court of Appeals to determine whether petitioner's notice of appeal was timely under Federal Rule of Appellate Procedure 4(c)(1).

The court's order and judgment denying petitioner's request for 28 U.S.C. § 2255 relief were entered 5 January 2015. (DE ## 84, 85.) In accordance with the court's 1 September 2015 order, petitioner has filed a declaration under penalty of perjury that he placed the notice of appeal in FCI 2-Butner's institutional mail room, with first-class postage prepaid, on 28 January 2015. (DE # 92.) Pursuant to the court's 2 October 2015, the government had until 16 October 2015 to file any document to dispute petitioner's declaration. (DE # 94.) It has not filed anything in response. Accordingly, petitioner's declaration is unrefuted. Because the date petitioner placed the notice of appeal in the mail is within 60 days after the entry of the 5 January 2015 order and judgment, it is hereby ORDERED that the notice of appeal is timely. See Fed. R. App. P. 4(a)(1)(B), (c)(1).

The Clerk is DIRECTED to forward a copy of this order to the Court of Appeals.

This 22 October 2015.



W. Earl Britt  
Senior U.S. District Judge